

**From:** Rodney Little <RLittle@mdp.state.md.us>  
**Subject:** RE: Letter from the mayor of the Town of Garrett Park  
**Date:** December 11, 2013 2:57:38 PM EST  
**To:** Gene Swearingen <garrett-park@comcast.net>  
**Cc:** Tim Tamburrino <TTamburrino@mdp.state.md.us>, "scott.whipple@mncppc-mc.org" <scott.whipple@mncppc-mc.org>, Caryn Brookman <cbrookman@sha.state.md.us>, Jessica Silwick <jsilwick@sha.state.md.us>, "jeanette.mar@dot.gov" <jeanette.mar@dot.gov>, "ccsnyder@verizon.net" <ccsnyder@verizon.net>

Mr. Swearingen,

I have read the letter from Mayor Benjamin (December 10, 2013) and the attached testimony of Mr. Charles Snyder presented on December 9, 2013. While Mr. Snyder's description of the Section 106 process is substantially correct, he did significantly err by stating that the "[Section 106] review has not been undertaken" and by thus implying that the Town is not in compliance with the regulatory requirements.

I spoke on the telephone with Mr. Snyder on two occasions, November 22 and December 6, primarily to answer his detailed questions about the Section 106 process. In our December 6 conversation, Mr. Snyder stated, in essence, that he and other residents were concerned that the Town was not complying with the Section 106 process. I immediately corrected him by pointing out that the Town, in fact, had initiated the 106 process by notifying our office of the proposed undertaking and seeking our comments on its effects. I further explained that we are unable to fully assess the impact of the proposed undertaking until we receive more detailed plans and information – plans and information that the Town has not yet had the opportunity to develop. Our letter of November 25, 2013, did indicate our opinion that the proposed conceptual project has the *potential* to cause "adverse effects" under the definitions of the regulations, particularly for the proposed new construction elements. We encouraged the Town to fully explore all prudent and

feasible alternatives in its planning that would both address project safety needs and avoid or minimize adverse effects on the defining characteristics of the historic district.

To reiterate, while the Section 106 process is far from being concluded, the Town of Garrett Park is in compliance with all federal and state requirements related to Section 106 at this early point in the planning process. As you move forward in your consideration of this undertaking, I urge you to take into account the considerations and planning steps that we recommended in our letter of November 25. If I may answer any questions or provide any additional information, do not hesitate to call.

J. Rodney Little  
Director, Maryland Historical Trust and  
Maryland State Historic Preservation Officer



## Town of Garrett Park

Incorporated 1898

December 10, 2013

Mr. J. Rodney Little  
State Historic Preservation Officer  
Maryland Historical Trust  
100 Community Place  
Crownsville, MD 21032-2023

Dear Mr. Little:

As a recipient of a Safe Routes to Schools grant from the State Highway Administration, the Town of Garrett Park is beginning the planning process for potentially constructing new and rehabilitating existing sidewalks along sections of three streets within our town. The town government is dedicated to preserving the historic character of the town, and is pursuing a Section 106 process in full consultation with the Maryland Historical Trust, the State Highway Administration, and the citizens of our town. We believe that we are doing so in good faith and in compliance with all federal and state requirements. We have a history, as we enhance our town, of respecting the special nature of our community as a National Historic District.

Attached is a copy of testimony presented by a resident of the Town of Garrett Park in a Town Council meeting last night in which he states that we are not in compliance with the Section 106 process and implies through quotes from a telephone conversation with you that you support that contention. We certainly hope that the selected quotes are a misrepresentation of your position and that you and your staff recognize our sincere desire and actions to date to comply with and exceed historic preservation standards and the Section 106 process.

If we are in any way in non-compliance with Section 106, if we have taken any actions which might compromise historic preservation, or if you have any concerns about our commitment to a fair, open, and participatory process which concludes with a project which fully reflects the historic character of the Town of Garrett Park, please let us know at this point.

Sincerely,

Peter Benjamin, Mayor  
Town of Garrett Park

## Sidewalks - Town Council Presentation December 9, 2013

I would like to clear up for the council and our neighbors in the audience some basic misunderstandings of Garrett Park's historic status and the legal restrictions and requirements that status imposes. It is clear from various comments we have heard and statements on the neighbors listserv that there is much confusion about where we stand.

In 1975, the town successfully applied to the federal government to have the whole town be named to the National Register of Historic Places in view of its rich historical nature. That brought the town under the legal ambit of the National Historic Preservation Act of 1966 as later amended. Under federal law, we must comply with that act.

Section 106 of that act states that when any "federal undertaking" can cause an "adverse effect" on an historical property such as Garrett Park, a review of the project is required before any federal money is committed to such a project...the so-called 106 Review. The Safe Routes to School project is federally funded and falls under that federal legal requirement.

Such a review has not been undertaken.

The regulations issued by the US Department of the Interior are very specific. They require a full public discussion of the project to seek alternatives to "avoid, minimize or mitigate any adverse affects." An adverse effect is defined as one that "may alter, directly or indirectly, any of the characteristics of a historic property...in a manner that would diminish the integrity of the property's location, design, setting, materials...feeling or association." Sidewalks would definitely diminish the integrity of our streetscapes.

The regulations further require the 106 review to "commenc[e] at the early stages of project planning," and that "the views of the public are essential to informed federal decision making in the section 106 process." The entire regulations are in the web site of the federal Advisory Council on Historic Preservation.

While the law pertains to federal agencies, in this case the Federal Highway Administration, that agency has delegated the oversight responsibility to the State Highway Administration, the SHA, which is the source of the grant. But the SHA has not carried out the 106 review. Apparently, the SHA is relying on the town to carry it out. And, by law, this 106 review must be done.

According to the regulations, the Maryland state Historic Preservation Officer is a the person whose job is to "reflect the interests of the state and its citizens in the preservation of their cultural heritage." The historic preservation officer is an integral part of the process to insure "that historic properties are taken into consideration at all levels of planning and development." It is largely up to the Historic Preservation Officer to determine whether all efforts have been taken to avoid adverse effects and look for alternatives.

The historic preservation office is the Maryland Historic Trust, and the director of the trust is J. Rodney Little. You have all received a copy of his three-page letter in which he found a high probability that the sidewalk project would have an adverse effect on Garrett Park, and in which he disagreed strongly with the town's contention that there would be no adverse effect. In the letter, he also instructed the town to "thoroughly explore" non-destructive alternatives to sidewalks because sidewalks and curbs would "drastically alter the district's park-like setting."

These are not idle words. They are in effect legal requirements. While the words in Little's letter are somewhat hedged, in more than an hour's worth of telephone discussions with me he made it clear he considers them as mandates. The SHA legally "must consult with" the

trust before committing any money, he said. If the Maryland Historic Trust and the SHA agree, the project can go forward. But if not, it could lead to a "bureaucratic nightmare" that could take "years to resolve," he said. If the town does not do what is required, it could risk the grant being withdrawn or going "back to the drawing board."

There is also, of course, the possibility of a lawsuit against the town or SHA, because in the 106 process the courts are the final arbiter of any dispute. And, as Mr. Little has said, the SHA would do "anything conceivable to avoid a lawsuit." That could leave the town high and dry having spent tens of thousands of dollars on a rushed project design that is of no use.

What is the answer, then?

In view of what the law requires the town to do, and what the historic trust has told the town to do – and to preserve the town we all love – I would recommend that the Town Council tonight vote to suspend any action on the grant, including the town's plan to send the request for proposal to the SHA for its approval. That will stop what appears to many town residents as a steamroller approach to the grant, and give time for the town to conduct a proper, legally required 106 review. Such a review should entail proper public notice and several hearings, and an investigation of alternatives such as speed bumps and stop signs to slow traffic, traffic calming devices, and a no-right-turn sign at Montrose or a left-turn-only sign at Clermont. It should also fully investigate a number of non-infrastructure activities called for in the Safe Routes to School law, such as education programs for parents, children and the school on safe roadway walking practices, all of which can get funding under the law.

I hope you will all act swiftly to protect the town we love.

Charles Snyder

10910 Montrose Avenue